

The next paragraph, however, to my surprise, reads: "The maximum recoverable rent of the said premises is \$650 per month". This could only be true if the standard rent was \$433.30. But the evidence in fact was all the other way, pointing to \$400. Hence, I think the obvious inference is that the respondent had unlawfully increased the rent by \$50 per mensem even while Pax United were the tenants, contrary to section 3 of the Ordinance (see agreed bundle of correspondence exhibited in the record). For this reason I respectfully disagree with the judge's conclusion that "\$650 p.m. should be regarded as the maximum recoverable rent". What evidence was there for so holding? The fact that this was the contractual rent was immaterial, because the parties could not "contract out" of the provisions of the Ordinance.

Assuming that \$400 was the standard rent this, of course, would place the respondent in a quandary. Where the plaintiff in an action has himself been in breach of mandatory provisions of the Ordinance, should he be entitled to rely on a double standard which is one sum of standard rent for him and a different sum for his tenant? Surely, in such a case the court may fairly and properly apply the maxim: *Qui sentit commodum debet sentire et onus*. If the respondent himself was free to flout the quantum of standard rent, does it lie in his mouth to say that it should still govern the rents received by the appellant from his sub-tenants? So deciding the issue raised in this appeal would, of course, be the easy way out. The court, however, would be shirking its plain duty when faced squarely with the problem raised in the instant case. I shall, therefore express my opinion without any attempt at evading the issue.

Paragraph (j), in my view, is a bad piece of drafting. The word "rents" in the first limb thereof is used in juxtaposition to "any sub-let part of the premises in excess of the maximum permissible rent for that part." As "rents" is plural and there cannot be more than a single rent for one subletting, I think the proper inference to be drawn from the extraordinary concatenation of the singular with the plural is that the word must connote several sub-lets taken together in cases where there is more than one part of the premises sublet. Clearly this must be so because in his pleading the respondent had to resort to the word "respectively" which does not appear in paragraph (j). Consequently "rents" should mean the rent of one part sublet where there is only one subletting, and aggregate rents where several parts are sublet but considered as a whole. Any other construction would be unreasonable and unjust. The most firmly established rules for construction of an obscure statute are those laid down in *Heydon's Case*,⁽³⁾ quoted in *River Wear Commissioners v. Adamson*,⁽⁴⁾ and in *The Solio Case*,⁽⁵⁾ where the

A Earl of Halsbury L.C. said:—

"Among the things which has passed into canons of construction recorded in *Heydon's Case*, we are to see what was the law before the Act was passed, and what was the mischief or defect for which the law had not provided, what remedy Parliament appointed and the reason of the remedy."

B It is notorious that Rent Control legislation had led to intolerable abuses causing landlords to be victimised by unscrupulous tenants. Paragraph (j) has been and clearly is intended to suppress the mischief and provide a remedy against unconscionable conduct. In this case, not only had the second limb of paragraph (j) not been flouted, but also the first, when account is taken of the undercharges, which exceeded the amount of the aggregate overcharge. The appellant's conduct was indeed such that no reasonable landlord can possibly have cause for complaint of profiteering.

D I would therefore allow the appeal and set aside the judgment and order of the court below. There again will be no order as to costs.

Barakbah L.P. concurred with Ong Hock Thye F.J.

Appeal allowed.

E Solicitors: Cheang, Lee & Ong; Dharmnanda & Co.

SUNDRALINGAM v. RAMANATHAN CHETTIAR

F [F.C. (Barakbah L.P., Azmi C.J. (Malaya) & Ong Hock Thye F.J.) July 17, 1967]

[Ipoh — Federal Court Civil Appeal No. X. 54 of 1966]

Moneylenders — Promissory note not attested in accordance with statutory requirement — Effect of — Moneylenders Ordinance, 1951, s. 27 — Interpretation of.

G *Precedent — Judicial courtesy — Agreement to differ — Failure to bring relevant case to notice of judge — Judgment made per incuriam.*

H A moneylender sued the borrower for money lent on a promissory note which was not attested in accordance with the requirements of section 27 of the Moneylenders Ordinance, 1951. The borrower did not understand the written language of the note; but on account of previous transactions it was admitted that he was aware of the terms and contents of the note. Counsel cited *Narayanan v. Alagappa* (1) as authority for the note not being invalidated for non-attestation if the borrower understands the terms, though not the written language, of the note. In the circumstances the trial magistrate felt bound by the decision of the superior court and gave judgment for the moneylender. The judgment was affirmed by the High Court on appeal ([1966] 2 M.L.J. 293). The appellant borrower appealed to the Federal Court on the question of the proper interpretation of section 27 of the Ordinance.

I Held: as the promissory note in this case was not attested in accordance with the statutory requirements of the Ordinance it was void.

Narayanan v. Alagappa (1) overruled; *Kasumu v. Baba Egbe* (3) applied.

Per Ong Hock Thye F.J.: "Each court is bound by the decisions of courts above it, but 'individual judges are not bound by each other's decisions, although judicial courtesy naturally requires that they do not lightly dissent from the considered opinions of their brethren' . . . within the past decade and even the last lustrum, judges in Malaya have, on several occasions respectfully agreed to differ, as may be seen from the reports in *The Malayan Law Journal*."

Cases referred to:—

- (1) *Narayanan v. Alagappa* [1956] M.L.J. 23, 24.
- (2) *Mohamed Ibrahim v. Yap Chin Hock* [1954] M.L.J. 127.
- (3) *Kasumu v. Baba Egbe* [1956] A.C. 539; [1956] 3 W.L.R. 575, 583.

FEDERAL COURT.

N. H. Chan for the appellant.

P. P. Dharmananda for the respondent.

Cur. Adv. Vult.

Barakbah L.P.: I agree with the judgments of my brothers Azmi and Ong which I had the advantage of reading. I could not state my own reasons without repeating what has been said by them with which I am in complete agreement. The appeal is allowed with costs here and in the courts below.

Azmi C.J. (Malaya): The plaintiff, a registered moneylender, brought an action against the defendant for the repayment of a sum of money lent to him on a security of a promissory note Exh. P.1.

At the trial before the learned magistrate P.W.1 S. P. Chidambaram, the plaintiff's attorney, explained that the promissory note P.1. was not attested by any of the officials mentioned in section 27 of the Moneylenders Ordinance, 1951, because the defendant indicated to him, the plaintiff, that he, the defendant, knew the English language. He also stated that the defendant had previously signed similar documents as security for other loans.

The defendant in his evidence, stated that he did not know English though he had a bank account. He could merely sign his name in English.

The learned magistrate was satisfied that the defendant did not know the English language but went on to refer to the previous transactions as follows:—

"These previous intermittent money-lending transactions between the plaintiff and the defendant is sufficient in my view to debunk any notion held by the defendant that he did not understand the contents of the promissory note P.1."

and subsequently after referring to the case of *K. R. Narayanan v. V. AL. Alagappa*,⁽¹⁾ came to the following conclusion:—

"Having found that the defendant understood the contents of the promissory note P.1. and being bound by the decision in *Narayanan's* case (quoted above) judgment was entered for the plaintiff, as prayed."

The relevant provisions of the Moneylenders

A Ordinance are as follows:—

27. (1) Whenever a promissory note is taken as security for any loan and the borrower is a person not understanding the written language on such a note, the note shall be attested by an Advocate and Solicitor of the Supreme Court, a President of the Sessions Court, a Magistrate, District Officer, Justice of Peace, Registrar of a Sessions Court, Commissioner of Oaths or such other person as may be appointed by the Minister generally for such purpose. . . .

B

The learned magistrate found as a fact that the defendant did not possess even an elementary knowledge of the English language and yet he finally stated that the defendant understood the contents of the note. It is not very clear to me what the learned magistrate meant when he said that the defendant understood the contents of the note. In any case it is quite obvious that the learned magistrate came to the conclusion that the defendant understood the contents of the note otherwise than from defendant's personal knowledge of what was written on it.

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The learned magistrate placed reliance on the judgment of Storr J. in *K. R. Narayanan v. V. AL. Alagappa*. Storr J. in that judgment, appears to express the opinion that "if he (the borrower) understands the terms and contents of the note" though he does not understand the language in which the note is written it would not be necessary to have the note attested under section 27.

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The learned magistrate thereupon gave judgment for the plaintiff.

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The defendant appealed to the High Court at Ipoh and MacIntyre J. in reference to the judgment of Storr J. above states as follows:—

"Although the decision of Storr J. has stood unchallenged for 10 years, with respect, I am unable to agree with his interpretation of the section. The first requisite of that section is that every promissory note written in a language not understood by the borrower, must be attested. The words "not understanding the written language on such note" means, in my humble opinion, an inability to read and comprehend the language in which the note is written."

G

With respect the views expressed by MacIntyre J. above are entirely in agreement with mine.

H

I would, however, go further to explain that it would not be sufficient for the purpose of sub-section (1) of section 27 if the borrower, though he could read the words written on the note but could not understand their meaning, or that he could understand the meaning if the note were read out to him by another person. In the last instance I have in mind Malays who are illiterate. I have in mind a case of a Malay borrower who, unable to read the written Malay on the note, would be able to understand it however, if the note is read to him by another person. In my view, in such circumstances, such other person who reads out the note must be one of those enumerated under sub-section (1) of

I

section 27. For example — a magistrate or a district officer.

In his judgment MacIntyre J. expressed the view that he was bound to follow the decision of Storr J. in the case cited by him, being a decision of a court of co-ordinate jurisdiction sitting on appeal.

On this question my view is that, we may properly follow the practice in England where a High Court Judge, though he cannot over-rule one of his brethren, could disprove his decision and decline to follow him. This to my own knowledge has been the practice in Malaya for several years now.

I would therefore allow the appeal, set aside the judgment of the court below and dismiss the plaintiff's claim. The respondent will pay the appellant's costs here and in the courts below.

Ong Hock Thye F.J.: This appeal raises the question: what is the proper interpretation of section 27 of the Moneylenders Ordinance 1951? The section provides that "whenever a promissory note is taken as security for any loan and the borrower is a person not understanding the written language on such note the note shall be attested" by certain designated officers and persons who "shall explain the terms of the promissory note to the borrower and shall certify thereon that the borrower appeared to understand the same." The following subsection goes on to provide that "any promissory note required to be attested under this section and not so attested shall be void and the lender shall not be entitled to recover any loan for which such note is taken as security."

In the magistrates' court at Ipoh the respondent, a registered moneylender, sued the appellant upon a promissory note which was unattested. It was admitted, and so held by the learned magistrate, that the borrower did not understand the written language of the note, which was English. On the other hand, it was also admitted that, by reason of numerous previous transactions of a similar character between the parties, the borrower was well aware of the terms and contents of the note. Counsel for the respondent cited to the learned magistrate a judgment of Storr J. in *Narayanan v. Alagappa*,⁽¹⁾ interpreting section 27 as follows:—

"If the borrower does not understand what is written on the promissory note, then an attester shall explain the terms of the note; it does not mean that, if the borrower does not understand the language in which the note is written, i.e. either English or Malay (vide section 16), there must be an attester, if he understands the terms and contents of the note."

Being bound by authority, the learned magistrate gave judgment in the respondent's favour. It was affirmed by the High Court at Ipoh on appeal, although with extreme reluctance, but

A MacIntyre J. felt himself bound to follow the decision of a court of co-ordinate jurisdiction by reason of what certainly was not *obiter dicta* expressed by Wilson J. to that effect in *Mohamed Ibrahim v. Yap Chin Hock*.⁽²⁾ This case was cited to the learned judge as authority which he could not disregard and he was persuaded into that view. The result then is the present appeal.

B Each court, of course, is bound by the decisions of courts above it, but "individual judges are not bound by each other's decisions, although judicial courtesy naturally requires that they do not lightly dissent from the considered opinions of their brethren": see *Law in the Making* (6th Ed.) p. 231. I do not think I can usefully add anything to what Sir Carleton Allen said, except to point out that, within the past decade and even the last lustrum, judges in Malaya have, on several occasions respectfully agreed to differ, as may be seen from the reports in *The Malayan Law Journal*.

D *Narayanan v. Alagappa*, at any rate, is bad law and has been clearly so since 1956, when Lord Radcliffe delivered the judgment of the Privy Council in *Kasumu v. Baba Egbe*,⁽³⁾ a decision binding on the highest court in Malaysia. That case concerns the effect of non-compliance with the statutory requirements of the Moneylenders Ordinance of Nigeria. The principles enunciated related to section 19, which is *in pari materia* with section 18 of our Ordinance; nevertheless, they are wholly applicable when it comes to interpreting our section 27. F Pointing out the purposes which distinguished the early Usury Acts from the Moneylenders Acts, Lord Radcliffe said:—

G "But the Usury Acts disappeared in 1854, and much of the Moneylenders Act, 1900, and the Moneylenders Act, 1927, is directed to enforcing measures of control that have no concern with the intrinsic nature of the contract made. Such requirements as that the moneylender must be registered or licensed, must use his authorized name, must procure a note or memorandum of the contract signed personally by the borrower, must keep a book in which is entered a contemporary record of the transaction, strike indifferently at all moneylender's loans, however moderate the terms of any particular transaction. When the governing statute enacts that no loan which fails to satisfy any of these requirements is to be enforceable it must be taken to mean what it says, that no court of law is to recognise the lender as having a right at law to get his money back. That is part of the penalty which the statute imposes. There is no room to reform the terms of the loan, since the statute is not concerned with the vice of its content but with the vice of the conditions under which it was made."

I *Kasumu's* case has since been repeatedly canvassed in our courts in 1959, 1965 and 1966 and should have been brought to the notice of the judge, whose judgment consequently must be regarded as *per incuriam*. *Kasumu* should apply unless the facts of a particular case take it out of the purview thereof. The instant case is not one of that sort.

I would allow the appeal with costs here and A
in the courts below.

Appeal allowed.

Solicitors: *Cheang, Lee & Ong; Dharmamanda & Co.*

TONG SWEE KING v. PEGANG MINING CO. LTD. & ORS.

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) & Ong Hock Thye F.J.) July 17, 1967]

[Ipoh — Federal Court Civil Appeal No. X. 4 of 1966]

Practice and Procedure — Intervention by interested party not a party in the suit — When leave granted — Principle — Legal right directly affected by these proceedings — R.S.C., 1957, O. 16.

In 1931 an agreement which contemplated a comprehensive mining scheme was made between Pegang Prospecting Co. Ltd. the lessees of certain mining lands, Ho Man the sub-lessee and Ho Kok Yew the sub-sub-lessee. This agreement is still valid and operative between the successors or representatives of the original parties, who are the 1st respondent company, the 2nd respondents and the appellant respectively in this appeal.

By an agreement made in 1963 and renewed in 1964 the appellant gave to one Choong Sam the right to work the mining lands she derived through the 1931 agreement. At this time the 1st respondent company had been granted certain interjacent mining lands, formerly a railway reserve which could not, for that reason, have been comprised in the original specific mining leases which were still being exploited and worked pursuant to the 1931 agreement. The question arose whether these new mining lands that the 1st respondent company acquired should be thrown into the pool of the comprehensive mining scheme with the result that Choong Sam would have the right to work and exploit these new lands with those he already had from the appellant. The 1st respondent company took the view that the new mining leases were not within the ambit of the 1931 agreement, so that Choong Sam could have the benefit of being able to work them also. Choong Sam therefore having undertaken to indemnify her against all costs and expenses, requested the appellant to bring the present action in the High Court at Ipoh against the respondent company to enforce her claim to work the new lands as being a right accruing to her upon a proper interpretation of the original agreement. The 2nd respondents being necessary parties were made co-defendants in the suit.

In December 1966 the trial judge gave judgment in favour of the 1st respondent. The appellant filed notice of appeal to the Federal Court against the whole of the decision given against her. By an agreement made in secret between the 1st respondent and the appellant on March 1, 1967 she accepted \$10,000 from the company as payment for not proceeding with her appeal. Choong Sam applied to the court for leave to intervene, praying either that his name or that the 2nd respondents' name be substituted, for that of the appellant on record.

Held (Azmi C.J. (Malaya) dissenting): (1) without going into the merits of the appeal itself, the final decision thereof must affect the applicant in a legal right which he has and not merely a commercial interest indirectly affecting his pocket. He, therefore, has a legal interest in the appeal, and in fairness and justice, the applicant ought to be given leave to intervene;

(2) leave given to substitute the applicant's name for that of the appellant, and to add the 2nd respondents as second appellants and in their place substitute the appellant to be jointly respondents with the company.

Cases referred to:—

(1) *Amon v. Raphael Tuck & Sons Ltd.* [1956] 1 Q.B. 357.

B (2) *Re Securities Insurance Co.* [1864] 2 Ch. 410.

(3) *In re Ellis* (1875-76), 2 Ch. D. 1.

(4) *Re Markham, Markham v. Markham* (1880-81), 16 Ch. D. 1.

(5) *Joss v. Wood* 55 E.R. p. 411.

(6) *Dollfus Mieg et Compagnie S.A. v. Bank of England* [1951] 1 Ch. 33.

C (7) *In re I.G. Farbenindustrie A.G.* [1943] 2 All E.R. 525; [1944] Ch. 41.

(8) *Oliver v. Ashman* [1961] 3 W.L.R. 669, 682.

(9) *Lyle Meller v. Lewis* [1956] 1 W.L.R. 29, 35-36.

(10) *Central London Property Trust v. High Trees House Ltd.* [1947] K.B. 130; 62 T.L.R. 559.

D (11) *Tool Metal Manufacturing Co. Ltd. v. Tungsten Electric Co. Ltd.* 69 R.P.C. 108; [1955] 1 W.L.R. 761; [1955] 2 All E.R. 657.

(12) *Robertson v. Minister of Pensions* [1949] 1 K.B. 227; 64 T.L.R. 526.

(13) *Harnham Singh v. Jamal Pirbhai* [1951] A.C. 688.

E FEDERAL COURT.

Ng Ek Teong (Miss Tsai with him) for the Intervener.

Ronald Khoo for the 2nd respondents.

F *F. C. Arulanandom* (N.T. Rajah with him) for the 1st respondent.

P. P. Dharmananda for the appellant.

Cur. Adv. Vult.

G Barakbah L.P.: I have had the advantage of reading the judgments of Azmi C.J. (Malaya) and Ong Hock Thye F.J., and with respect I agree with the views expressed by my brother Ong. I have nothing to add except to say that the applicant is legally interested in Civil Suit No. 304 of 1964 as the result of the appeal in the appellant's favour will undoubtedly give the applicant the right to work certain lands along with mining leases Nos. 8899 and 11543 pursuant to the agreement dated 27th July, 1954, made with the appellant. In other words the final decision of the appeal must affect the applicant in his legal right to mine certain lands which are presumably the subject matter of the appellant's claim in the said suit — see the case of *Amon v. Raphael Tuck & Sons Ltd.*⁽¹⁾ In my view the applicant is not only commercially interested in the matter but he is legally interested in it.

Furthermore, from the very beginning of the suit the applicant had given the appellant a full and an abundantly secured indemnity against her costs in and by the action and only